

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MARCO LEE,)	
)	
Plaintiff,)	
vs.)	NO. CIV-04-1496-HE
)	
J. MELOTT, ET AL.,)	
)	
Defendants.)	

ORDER

Plaintiff Marco Lee instituted this § 1983 action against several employees of Diamondback Correctional Facility, claiming his constitutional rights were violated while his was incarcerated at the private prison. Consistent with 28 U.S.C. § 636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Robert E. Bacharach, who has issued a Report and Recommendation suggesting that a motion to dismiss filed by the defendants be granted. The complaint fails to state a claim, the magistrate judge concluded, because the plaintiff failed to exhaust available administrative remedies.


The plaintiff failed to object to the Report and Recommendation, and, consequently, waived his right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996), *cert. denied*, 519 U.S. 909 (1996). *See* 28 U.S.C. § 636(b)(1)(C); LCvR72.1(a). The court also concurs with Magistrate Judge Bacharach that the plaintiff's claims must be dismissed for failure to satisfy the requirement of the Prison Litigation Reform Act that a prisoner adequately plead and prove exhaustion of administrative remedies prior to filing suit. 42 U.S.C. § 1997e(a).

Accordingly, the court adopts the magistrate judge's Report and Recommendation,

GRANTS the defendants' motion to dismiss [Doc. #21], and **DISMISSES** the action without prejudice. This ruling moots the plaintiff's request for summary judgment, included in his April 21, 2005, response brief [Doc. #25].

IT IS SO ORDERED.

Dated this 25th day of August, 2005.



JOE HEATON
UNITED STATES DISTRICT JUDGE